STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ENERGY AND MINERAL RESOURCES
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ON H.R. 3778 AND H.R. 3796
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Madam Chairman and members of the Subcommittee, thank you for the opportunity to participate in this hearing and to discuss the important issues raised by the approaching expiration of the Office of Surface Mining Reclamation and Enforcement's (OSM's) authority to collect the Abandoned Mine Land (AML) fee.

In particular, I would like to thank Representative Peterson for introducing the Administration's bill, H.R. 3778. The Administration's bill seeks to reauthorize OSM's authority to collect the AML fee, set to expire on September 30, 2004, and to make positive changes to get this important program back on track.

I would also like to thank you, Madam Chairman, and Representative Rahall for introducing your bill, H.R. 3796. We look forward to working with the Congress to reach agreement on the important issues surrounding the collection and use of the AML fee.

The Administration believes that the problem of Abandoned Mine Lands is a national problem that requires a national solution.

In the years since it was enacted in 1977, the AML program has been responsible for significant reclamation of abandoned coal mine sites and for improving and protecting the lives, health and safety of Americans living in the coalfields. However, that job is not finished. Moreover, an inherent conflict in the way the AML program operates makes it unlikely that the current system is even capable of finishing the job within the lifetime of anyone living in the coalfields today.

H.R. 3778, the Administration's legislative proposal, will focus more AML funding on the areas most damaged by this nation's reliance on coal for industrial development and wartime production, long before the establishment of reclamation requirements in the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

Shifting the program's resources based on historic production will allow us to spend the money where the problems exist. By distributing future fees based on need, the Administration's proposal will provide a national solution for reducing the current, ongoing threats to the health and safety of millions of citizens living, working and recreating in our Nation's coalfields.

We cannot support the provisions in H.R. 3796 that call for additional funding because they are inconsistent with the Administration's budget and program priorities. Neither can we support the allocation provisions because they do not further the goal of expediting cleanup as quickly as those

provisions contained in H.R. 3778. In addition, the Administration cannot support creating new mandatory spending programs or allocate funds designated for AML cleanup for other purposes.

Background

The Surface Mining Control and Reclamation Act (SMCRA) was enacted by Congress in 1977. Since then, the Abandoned Mine Land program has reclaimed thousands of dangerous sites left by abandoned coal mines, resulting in increased safety for millions of Americans. Specifically, more than 260,000 acres of abandoned coal mine sites have been reclaimed through $3.4 billion in grants to States and Tribes under the AML program. In addition, hazards associated with more than 27,000 open mine portals and shafts, 2.9 million feet of dangerous highwalls, and 16,000 acres of dangerous piles and embankments have been eliminated and the land has been reclaimed. Despite these impressive accomplishments, $3 billion worth of high priority health and safety problems remain to be reclaimed.

Even if all collected AML fees and the unappropriated balances of $1.5 billion were used, we would still have insufficient funds to address the health and safety-related coal mining problems because of the fund's current distribution formula. Moreover, under the current distribution formula, it would take an average of 47 more years to complete reclamation. As a result, dangerous sites would continue to be a threat to life and health for almost another half century. In some cases, remediation would take nearly a century.

The current allocation system makes it impossible to complete the job of reclamation in the way that Congress intended. The September 30th expiration of the current AML fee collection authority is our opportunity to reform that authority and the distribution formula, and put it on track to finish the job of reclaiming abandoned coal mine problems.

SMCRA's Fee Allocation Problem

SMCRA requires that all money collected from tonnage fees assessed against industry on current coal production ($0.35/surface mined ton; $0.15/deep mined ton; and $0.10/lignite) be deposited into one of several accounts established within the AML fund. Fifty percent (50%) of the fee income generated from current coal production in any one state is allocated to an account established for that state. Likewise, 50% of the fee income generated from current coal production on Indian lands is allocated to a separate account established for the tribe having jurisdiction over such Indian lands. The funds in these state or tribal share accounts can only be used to provide AML grant money to the state or tribe for which the account is established.

Twenty percent (20%) of the total fee income is allocated to the "Historic Production Account." Each state or tribe is entitled to a percentage of the annual expenditure from this account in an amount equal to its percentage of the nation's total historic coal production -- that is, coal produced prior to 1977. As is the case with state or tribal share money, each state or tribe must follow the priorities established in SMCRA in making spending decisions using money from the historic production account. However, unlike the allocation of state or tribal share money, once the state or tribe certifies that all abandoned coalmine sites have been reclaimed, it is no longer entitled to further allocations from the historic production account.

Ten percent (10%) of the total fee income is allocated to an account for use by the Department of Agriculture for administration and operation of its Rural Abandoned Mine Program (RAMP).

The remaining 20% of the total fee income is allocated to cover Federal operations, including the Federal Emergency Program, the Federal high-priority reclamation program, the Clean Streams Program, the fee compliance program, and overall program administrative costs.

In the early years of AML program, most of the fees collected went directly to cleaning up abandoned coal mine sites. Some states and tribes with fewer abandoned coal mine sites finished their reclamation work relatively soon. However, under current law, those states and tribes are still entitled to receive half of the fees collected from coal companies operating in their states. In the early years of the program this didn't cause a considerable problem, because the Eastern states, where 93% hazardous sites are located, were also the states where most of the coal was being mined and were, therefore, receiving the majority of the AML fees.

However, beginning in the 1980s, a shift occurred whereby the majority of the coal mined in this country began coming from mines in Western states. This shift resulted in the allocation of a large part of AML fees to states that have no abandoned coal mine sites left to clean up. As a result, each year less and less money is being spent to reclaim the hundreds of dangerous, life-threatening sites. Currently, only 52% of the money appropriated each year is being used for the primary purpose for which is it collected – reclaiming high priority abandoned coal mine sites. That percentage will continue to decline each year unless the law is reauthorized and amended to correct this fundamental problem.

The Administration has proposed legislation that accomplishes four primary objectives:

- Extend the authorization of fee collection authority while balancing the interests of all coal states and focusing on the need to accelerate the cleanup of dangerous abandoned coal mines by directing funds to the highest priority areas so that reclamation can occur at a faster rate, thereby removing the risks to those who live, work and recreate in the coalfields as soon as possible;

- Honor the commitments made to states and tribes under the current law;

- Provide additional funding for the 17,000 unassigned beneficiaries of the United Mine Workers of America Combined Benefit Fund (CBF) while protecting the integrity of the AML fund; and,

- Provide for enhancements, efficiencies and the effective use of funds.

These objectives recognize the need to strike a balance that addresses both the ongoing problems faced by states with high priority coal-related health and safety issues while not placing those states where the majority of fees are currently generated at a disadvantage.

Bill Analysis

A. Changes to the Allocation Formula

HR 3778 would change the current statutory allocation of fee collection which is progressively directing funds away from the most serious coal-related problem sites. All future AML fee collections, plus the existing unappropriated balance in the RAMP account, will be directed into a new single account.

Grants to non-certified states or tribes (those states and tribes that still have unreclaimed coal problems) will be distributed from that single account based upon historic production, which is directly related to the magnitude of the AML problems. As a result of these modifications, H.R. 3778 completes the reclamation of the highest priority work while avoiding $3.2 billion in collections that would have been necessary under current law to achieve the same result. At the same time, H.R. 3778 will remove more people at risk from the dangers of health and safety coal sites (142,000 per year or an increase of 87%).

H.R. 3778 provides that no non-certified state or tribe could receive an annual allocation that would exceed 25 percent of the total amount appropriated for those grants each year. This provision would ensure that no one State receives too high a percentage of the grants in any one year. Any State whose allocation would otherwise exceed this cap would recoup the difference in the program's latter years as other States and tribes complete their high-priority coal-related projects and are no longer eligible for future grants.

Existing state and tribal share accounts will not receive any additional fees collected after September 30, 2004. The current unappropriated balance in the state and tribal share accounts will be distributed in one of two ways, depending on certification status: Certified states and tribes would receive the current unappropriated balances in their accounts on an accelerated basis in payments spread over ten years (FY 2005-2014), subject to appropriation. There would be no restrictions on how these monies are spent, apart from a requirement that they be used to address in a timely fashion any newly discovered problems related to abandoned coal mines. Non-certified states and tribes will receive their unappropriated balances in annual grants based upon historic production. If a non-certified state or tribe completes its abandoned coal mine reclamation before exhausting the balance in its state share account, it will receive the remaining balance of state share funds in equal annual payments through FY 2014. Non-certified states and tribes that exhaust their unappropriated state share balances before completing their abandoned coal mine reclamation will continue to receive annual grants from the newly-created single account in amounts determined by their historic coal production.

In contrast to the Administration's proposal, H.R. 3796 would continue to allocate 50% of the fees collected to state or tribal share accounts regardless of whether the state or tribe has any unreclaimed high priority coal-related AML problems. In addition, if a certified state has public domain lands available for leasing, H.R. 3796 would amend current law to transfer revenues generated by the Mineral Leasing Act that currently go to the Treasury, in amount equal to the existing unappropriated balance of that state's State-share account. An amount equivalent to the amount provided to the state from Mineral Leasing Act revenues would then be debited from that state's State-share account and reassigned to the historic production. As a result, certified states and tribes with leasable public domain lands would receive their current unappropriated State- share balance as well as an amount equivalent to their 50% State-share distribution going forward. These mandatory payments of approximately $1 billion over ten years would neither be subject to Congressional appropriation nor contribute to our broader objective of AML reform.

B. Elimination of AML funding for the RAMP Program

H.R. 3778 amends SMCRA to remove the existing authorization of expenditures from the AML fund for the Rural Abandoned Mine Program (RAMP) under the jurisdiction of the Secretary of Agriculture. No funds have been appropriated for this program, which reclaimed lower priority abandoned mine land (AML) sites, since FY 1995. Elimination of this authorization would facilitate the redirection of AML fund expenditures to high-priority sites. Accumulated unappropriated balances in the RAMP account would be made available for reclamation of high-priority coal-related sites.

H.R. 3796 also endorses eliminating future allocations to the RAMP fund. However, it would reassign those funds to offsetting any deficit in the net assets of the United Mine Workers of America Combined Benefit Fund, rather than making those funds available for its intended purpose of AML reclamation.

C. AML Reclamation Fee Rates

H.R. 3778 extends reclamation fee collection for 14 years and modifies reclamation fee rates in an effort to closely match anticipated appropriations from the AML fund with anticipated revenues during that time. The proposed changes would maintain the current fee structure while uniformly reducing the fee rates by 15 percent for the five years beginning with FY 2005, 20 percent for the next five years, and 25 percent for the remaining years through September 30, 2018. Those rates are based on an analysis of coal production trends and the resultant impacts on reclamation fee receipts. The Administration's proposed uniform graduated fee reductions make the program revenue neutral and possibly have the added benefit of resulting in lower costs to consumers. The new expiration date reflects the time required to collect revenues sufficient to reclaim all outstanding currently inventoried coal-related health and safety problem sites within 25 years. Finally, existing language requiring the Secretary to establish a new fee rate after September 30, 2004 based on CBF transfer requirements would be removed.

H.R. 3796 proposes to extend the fee collection authority for 15 years to 2019. H.R. 3796 also proposes to lower the reclamation fee rates by 7 cents per ton for surface mined coal, 3 cents per ton for underground mined coal, and 2 cents per ton for lignite. This is a reduction overall of 20 percent. However, since reclamation would take significantly longer than under H.R. 3778, fee collection authority would need to be reauthorized again to raise sufficient revenue to eliminate the AML inventory.

D. United Mine Workers of America Combined Benefit Fund (CBF)

In the Energy Policy Act of 1992, Congress established the United Mine Workers of America Combined Benefit Fund (CBF). The CBF provides health care and death benefits to certain retired union coal miners and their dependents and survivors. Approximately 40,000 of the CBF's beneficiaries have been "assigned" to responsible mining companies. These companies pay a yearly premium into the CBF on behalf of each of their assigned beneficiaries. However, approximately 17,000 additional beneficiaries cannot be assigned to any company because neither the original employer nor any other responsible company remains in existence.

Under the law creating the CBF, premiums for unassigned beneficiaries are to be assessed equally against all of the companies participating in the CBF. To reduce the financial burden on the industry, however, Congress mandated the transfer of interest earned on the AML fund to the CBF to defray the cost of health care benefits for these unassigned beneficiaries. Historically, these interest transfers have met nearly all of the CBF's unassigned beneficiary premiums. It is our understanding that, until recently, no mining companies have had to pay unassigned beneficiary premiums since the CBF was created.

The transfer provision in SMCRA has been interpreted to permit a yearly transfer from the AML Fund to the CBF of up to, but not more than, $70 million per year. H.R. 3778 amends SMCRA by adding a new provision that governs transfers from the fund to the CBF for health benefits for unassigned beneficiaries. The Administration's bill would replace and improve upon the existing provisions in SMCRA by removing the $70 million per year cap, and by making interest credited to the account in

prior years available. These measures would protect the integrity of the AML fund while providing additional monies to meet CBF needs for unassigned beneficiaries.

H.R. 3796 would require transfer of all interest projected to be "earned and paid to the Combined Fund" each fiscal year. We believe that the authors meant to refer to interest earned and paid to the AML fund, not the Combined Fund. If so, H.R. 3796 would remove the $70 million cap on annual transfers. It also would expand the allowable uses of the transfers to include payment of any deficit in the net assets of the CBF, not just expenditures for health care benefits for unassigned beneficiaries. Both the stranded interest and the unappropriated balance of the Rural Abandoned Mine Program (RAMP) allocation (currently approximately $302 million) would be available for transfer to the CBF in FY 2004 and future years. This transfer language appears to strike the provision in existing law that limits transfers to the amount needed to cover specific CBF expenditures. H.R. 3796 seemingly requires the transfer of all interest and other available funds without limitation.

E. Minimum Program Funding

H.R. 3778 provides that no State or tribe with high-priority problem sites would receive an annual allocation of less than $2 million. This provision would ensure that States and tribes will receive an amount conducive to the operation of a viable reclamation program.

H.R. 3796 requires a minimum annual grant of $2 million for all states and tribes regardless of their certification status. Any shortfalls in appropriations for this purpose are to be made up from the Federal share account. It also adds Tennessee as a minimum state, without regard to the existing SMCRA requirement for a state to maintain an active regulatory (Title V) program before it is entitled to receive AML grants.

F. Remining

Both bills extend the remining incentives existing in current law, which provide reduced revegetation responsibility periods for remining operations and an exemption from the permit block sanction for violations resulting from an unanticipated event or condition on lands eligible for remining. H.R. 3778 makes these incentives permanent by removing the expiration date while H.R. 3796 extends the expiration date to 2019. Additionally, H.R. 3778 authorizes the Secretary to adopt other remining incentives through the promulgation of regulations, thereby leveraging those funds to achieve more reclamation of abandoned mine lands and waters. H.R. 3796 does not provide for the creation of additional remining incentives.

G. AML Reclamation Priority

H.R. 3778 preserves the autonomy of the states and tribes by maintaining the current priority structure and requires that expenditures from the AML fund on eligible lands and water for coal-related sites reflect the listed priorities in the order stated. H.R. 3778 focuses on collecting enough money to provide each state or tribe with sufficient funds to complete its highest priority AML sites. The Administration's bill will accomplish these objectives by providing funds for all States and tribes to finish in less time than under a continuation of the current program: on average 22 years sooner, but in many cases, decades sooner.

H.R. 3796 amends the priority system to eliminate the general welfare component of priorities 1 and 2, leaving public health and safety as the only elements of those priorities. H.R. 3796 also requires that

priority 3 work be undertaken only in conjunction with a priority 1 or 2 project; eliminates priority 4 (public facilities); and eliminates priority 5 (development of publicly owned land). Finally, for State-share and historic production grants to non-certified States, H.R. 3796 requires strict adherence to the revised priority rankings.

Both H.R. 3778 and H.R. 3796 remove the existing 30 percent cap on the amount of a State's allocation that may be used for replacement of water supplies adversely affected by past coal mining practices. This change is consistent with our goal of focusing fund expenditures on high-priority problems. The lack of potable water is one of the most serious problems resulting from past coal mining practices, particularly in Appalachia.

H. Emergency Reclamation Program

H.R. 3778 proposes amending the emergency reclamation program for abandoned mine land problems that present a danger too great to delay reclamation until funds are available under the standard grant application and award process. H.R. 3778 would revise this section by authorizing the Secretary to adopt regulations requiring States to assume responsibility for the emergency reclamation program. This change would promote efficiency and eliminate a redundancy in that potential emergencies would be investigated only by the State, not by both the OSM and the State, as occurs under the current program.

H.R. 3796 does not alter the existing emergency reclamation program structure.

I. Reclamation Set-Aside Programs

H.R. 3778 revises future reclamation set-aside program provisions to specify that expenditures from funds set aside under this program may not begin until the State or tribe is no longer eligible to receive an allocation from AML grant appropriations under SMCRA. The revised date in the Administration's proposal is more consistent with the purpose of this set-aside, which is to provide States and tribes with a source of funding to address abandoned mine land problems that remain or arise after funds are no longer available under SMCRA.

H.R. 3796 removes the authorization for this set-aside.

Both bills provide that states and tribes can set-aside up to 10% of their historic production grant funds in an interest-bearing trust fund for comprehensive abatement and treatment of acid mine drainage in qualified hydrologic units. Both bills provide for simplification and streamlining of the requirements for the acid mine drainage treatment trust fund set-aside program, including removal of the requirement for Secretarial review and approval of individual treatment plans.

J. Completion of Coal Reclamation - Certification

H.R. 3778 establishes the conditions under which a State or tribe may certify that it has completed all coal-related reclamation of eligible lands and waters. Under the existing provisions, the State or tribe would then be eligible to spend its State share allocation on sites impacted by mining for minerals other than coal. The draft bill would amend this section by revising SMCRA to clarify that certification means that all coal-related high priority health, safety and environment reclamation has been achieved. This subsection previously did not specify which priorities must have been met. H.R. 3778 also allows

the Secretary to make the certification for a State or tribe in which all coal-related reclamation work has been completed.

We are aware of recent information regarding the current status of coal reclamation in Wyoming. I have asked my office to review this information and to report back to me so that we can determine what affect, if any, this may have on the reauthorization proposals.

H.R. 3796 maintains current certification procedures.

K. Black Lung Excise Tax Collection and Auditing

H.R. 3778 authorizes the expenditures for collection and audit of the black lung excise tax. This revision would synchronize collections and allow OSM auditors to conduct audits of black lung excise tax payments at the same time as they audit payment of reclamation fees under SMCRA. It would promote governmental efficiency, eliminate redundancies, and reduce the reporting and record keeping burden on industry.

H.R. 3796 does not contain a similar provision.

Conclusion

The problems posed by mine sites that were either abandoned or inadequately reclaimed prior to the enactment of SMCRA do not lend themselves to easy, overnight solutions. To the contrary, these long-standing health and safety problems require legislation that strikes a balance by providing states and tribes with the funds needed to complete reclamation, while fulfilling the funding commitments made to states and tribes under SMCRA. This is the inherent tension that currently exists in SMCRA. We look forward to an open and a productive debate to amend and reform OSM's fee collection authority to fulfill the mandate of SMCRA to address these high priority healthy and safety concerns in a manner that directs the funds to the states and tribes where they are needed. As noted earlier, the current fee collection authority is scheduled to expire in just over six months, on September 30, 2004. There is much work to be done to ensure that reforming the AML fee collection authority, allocation formula, and other needed reforms become a reality. We believe that H.R. 3778 addresses these problems in a manner that is fair to all States and supports the Administration's budget and program priorities.

We stand ready to assist the Committee. We thank the Committee for this opportunity to present the Administration's views on these important legislative proposals and we look forward to working together as Congress continues consideration of these important measures.